

Methods of Proof and Appeal before the Specialized Commercial Court

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Abstract:

Given the continuous changes in the legal and commercial spheres, commercial justice is particularly significant, as it actively engages in the resolution of business conflicts in all their manifestations. The methods of proof and the appeal processes in the Specialized Commercial Court are among the most critical elements requiring special attention. This intervention provides an opportunity to examine the methods of proof employed by the Specialized Commercial Court and to review the appeal mechanisms available to the parties involved. Understanding these processes is essential for both lawyers and those involved in commercial cases. A thorough understanding of the methods of proof and the appeal process in the Specialized Commercial Court enhances the principles of fairness and ensures equal access to legal rights and protections for individuals and companies within the commercial environment. This work will underscore the importance of evidence in legal endeavors, outline the processes for submitting evidence to the Specialized Commercial Court, and review the mechanisms available for appealing its judgments in the context of human rights.

Keywords: Business Environment; Commercial Justice; Proof; Appeal; Commercial Court.

Introduction:

The Specialized Commercial Court serves as a pivotal institution within the commercial judicial system, tasked with resolving disputes between parties engaged in commerce. Established under Article 28 of Law No. 22/13, dated 12/07/2022, which amends the Code of Civil and Administrative Procedures, this court delineates both qualitative and territorial jurisdiction for litigation. The Algerian legislature further solidified this framework through the promulgation of Organic Law No. 22/10, dated 09/06/2022, pertaining to Judicial Regulation.

Both the appeal processes and the methods of evidence in the

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Specialized Commercial Court constitute essential components of the commercial justice framework, as they constitute the main tools for resolving disputes and achieving justice between the disputing parties. This system aims to uphold principles of justice and equality. Appeals and evidence must be presented in accordance with specific legal procedures that govern the court's operations.

A crucial element of the legal process in the Specialized Commercial Court is the appeal, which allows parties to contest the court's decisions. It is the mechanism through which appeals or challenges to the rulings issued by this court are filed, necessitating those appeals be submitted within specified timeframes and based on established legal grounds. Furthermore, evidence plays a vital role in a successful legal case; its purpose is to substantiate and validate the claims made by the parties. Parties are required to present evidence in a manner that is orderly, appropriate, and compliant with relevant legal regulations, especially given the commercial context and its unique complexities.

This article aims to foster collaboration with lawyers who have expertise in business matters to ensure that parties receive accurate legal guidance and effective representation within the justice system. It also seeks to elucidate the efficacy of appeals and the presentation of evidence before the Specialized Commercial Court, emphasizing the specific legal procedures that parties must adhere to when submitting relevant documents and evidence. In light of these considerations, we pose the following questions:

Study Problem:

The problem of this study can be formulated in the following questions:

- What are the procedures for proving cases in the Specialized Commercial Court?
- How do the appeal mechanism's function?

To address these inquiries, the study is divided into two parts. The first section examines the procedures for presenting evidence in the Specialized Commercial Court, while the second focuses on the court's appeal processes.

The First Topic:

Procedures for Proving Cases in Specialized Commercial Courts

Evidence, in a general sense, refers to the substantiation of a specific fact or legal act that constitutes an element of the case and is therefore recognized as established. As the saying goes, "There is no case without evidence."¹ This section will first address The Principle of Free Proof in Commercial Matters, as this examination pertains specifically to proof before the Specialized Commercial Court. This focus does not deviate from the merits of proof in

commercial articles, given the nature of the cases handled by these courts, which possess exclusive substantive jurisdiction. Following this, we will explore the exceptions to this principle and subsequently discuss the methods of proof applicable to commercial articles.

The foundational principle of Free Proof in commercial matters serves as the first prerequisite. This principle is one of the cornerstones of commercial law, emphasizing the flexibility allowed in the types of evidence that may be presented. To thoroughly understand this concept, it is essential to clarify its meaning and the intent behind its adoption and implementation. We will discuss this principle in accordance with the following three sections:

First section: The Content of the Free Proof Principle

The objective of the free proof principle is to liberate commercial evidence from the legislative constraints typically imposed on evidence in civil cases. In commercial matters, evidence may be presented without restriction through any method of proof unless otherwise specified by special legislation². This flexibility is essential, as commercial transactions are often characterized by their speed, irrespective of the type and value of the businesses involved—whether they pertain to legal entities or individuals. In contrast, civil proceedings tend to be slower and more cumbersome.

As articulated in Article 333 of the Civil Code, commercial matters can be substantiated through witness testimony and other forms of evidence, even when the value of the lawful activity exceeds 100,000 DZD. Furthermore, Article 30 of the Commercial Code stipulates that "Each commercial contract shall be certified with official bonds, customary bills, acceptable invoices, correspondence, entries in the parties' records, proof of evidence, or by any other means deemed acceptable by the court."³ This enshrines the principle of proof in all its dimensions within the commercial context.

Second section: The Rationale Behind the Implementation of the Free Proof Principle in Commercial Transactions

The foundation for adopting the free proof in commercial transactions lies in the nature of trade, which is characterized by credit and speed. Therefore, it is imperative to address the following elements:

First requirement: Velocity

Speed is a vital component for achieving financial success and economic prominence in business operations. Given the volume of transactions executed by traders, the time factor becomes crucial, necessitating both speed and efficiency in alignment with the business environment.⁴

Second requirement: Credit

Credit refers to granting the trader a deadline for completion, which complements speed by enabling the trader to maximize the number of commercial transactions conducted.

Third section: Application of the Free Proof Principle in Commercial Transactions

The concept of the free proof is illustrated through applications that pertain to deviations from the prohibitions against fabricating evidence for oneself and compelling someone to provide evidence against oneself. These applications include the following:

First requirement: Violation of the Prohibition on Self-Promotion

It is generally against the rule of evidence for an individual to fabricate evidence in their favor. However, in commercial transactions, the law permits a trader to use evidence to support their claims against third parties, provided that the non-trader's evidence is the most significant.

Second requirement: Business Books

By Article 13 of the Commercial Code, which states, "The judge may accept regular business books as proof between traders for business,"⁵ the legislator mandates that merchants maintain business books that document their commercial operations. These books may be utilized as evidence, provided they are regular and the entries pertain to the subject of the dispute between traders.

Third requirement: Admissible Invoice⁶

An invoice, which is a written document issued by the seller, records information verifying the value, quantity, and quality of the products supplied to the buyer. As long as it is valid and free from defects, the invoice is considered proof under Article 30, paragraph 3 of the Commercial Code, even when issued by the seller.

Fourth requirement: Commercial Correspondence

According to Article 30, paragraph 4 of the Commercial Code, correspondence from the consignee's dealer is regarded as supporting evidence for the accuracy of the information contained therein. It serves as a tool of proof in commercial matters. Consequently, merchants can set aside the general principle that "a person may not fabricate evidence for themselves" and rely on the evidence they have presented in opposition to their counterpart.

Second section: Violation of the Prohibition on Compelling Self-Incrimination

The legislator has authorized the submission of business books to extract information relevant to disputes, particularly in cases involving

company dissolution and bankruptcy. This is permitted under Articles 13 and 15 of the Commercial Code⁷, either at the request of a litigant or by the judge's own initiative.

The exceptions to the principle of free proof constitute the second condition.

There are legal exceptions to the principle of free proof, as outlined in the following sections:

First Section: Constitutional Exceptions

Commercial law mandates that certain transactions require official documentation, which contradicts the concept of free proof in commercial matters. Such agreements are deemed void if not executed in accordance with the formal requirements.

First requirement: Contracts Pertaining to Companies

Article 545 of the Commercial Code states, "The company establishes an official contract; otherwise, it is invalid, and no evidence shall be accepted between the partners when it exceeds or contravenes the substance of the company's contract." This indicates that a formal contract is necessary for the company's agreements. If partners are required to provide written proof among themselves by the end of the month, then the writing and evidence required for third parties are not applicable. Article 333 of the Algerian Civil Code underscores the importance of material reality⁸, and Article 572 of the Commercial Code further clarifies this requirement, stating, "Waiver of quotas can only be proven by a formal contract." Moreover, Article 795, paragraph 2 of the Commercial Code prohibits the formation of a corporation without proper documentation.

Second requirement: Contracts Pertaining to Air and Maritime Trade

The legislature specifies that any contract related to air or maritime trade shall be classified as a commercial business by form, as outlined in Article 3, paragraph 3 of the Commercial Code. These legal agreements include significant transactions such as the establishment, leasing, or purchase of ships and aircraft, as well as those involving marine and aviation insurance and all other facets of maritime and aviation trade.

Second requirement: Store Contracts

Article 79 of the Commercial Code stipulates that a business must engage in sales through an official contract; otherwise, the transaction is deemed void, as outlined in Article 120 of the Code. This requirement is grounded in the official regulations governing all commercial contracts. Furthermore, Article 187 bis of this Act states, "The acquisition of a mortgage on the business is established by an official contract," and mandates that leases be drafted in official form to avoid invalidity.

It is important to note that the legislator employed terminology in the commercial legalization provision of Article 30 that is more precise than that found in the civil legalization provision. While the term "formal contract" is used in Article 324 of the Civil Code, Article 30 refers to "official bonds." Although Article 324 discusses bonds rather than contracts, it appears that the legislator misinterpreted the French term "Acte," confusing it with the meaning of conduct rather than contract.

Second section: Agreement-Related Exceptions

Article 3 of Act No. 06/02, which regulates the notary's profession, authorizes notaries to draft contracts that the law requires to be formal, as well as contracts intended for individuals. This exception applies solely to the principle of *pacta sunt servanda*, which stipulates that, in the event of a dispute, proof may be established only through writing, thereby violating the prevailing principle of free proof in commercial matters.

Third Prerequisite: Evidence in Commercial Matters One form of evidence pertains specifically to commercial documents, such as the previously mentioned commercial notebooks, invoices, and letters. Therefore, we will focus on the common means of proof applicable to both civil and commercial matters, which can be categorized into modern and traditional methods of proof.

First section: Conventional Methods of Proof in Commercial and Civil Matters

The following describes the conventional methods of proof utilized in civil and commercial matters:

First requirement: Written Proof

Article 324 of the Civil Code states that official contracts established by public officials rank first and represent the strongest form of evidence.⁹ "The official contract is one in which an official, public officer, or person in charge of a public service certifies what they have received or accomplished in accordance with legal forms and within the limits of their authority and competence."¹⁰ Additionally, customary contracts are governed by Article 127 of the Civil Code.¹¹

Second requirement: Witness Testimony

Witness testimony is one of the most frequently employed forms of evidence in court. Furthermore, commercial matters may be proven through witness testimony under Article 333 of the Civil Code, regardless of the value of the transaction. In contrast, for civil matters, witness testimony can only be validated if the matter exceeds a value of 100,000 DZD, and no violation or exceeding documentation may be established other than through written evidence.

Third requirement: Acknowledgment

According to Article 341 of the Civil Code, an acknowledgment is the recognition by the opposing party of a legal fact claimed against them during judicial proceedings. Furthermore, even in cases where there is a dispute over a specific fact, the adversary's acknowledgment negates the need for proof and must be integrated or linked only to the dispute at hand. If acknowledgment is made, it serves as a clear argument against the headquarters in accordance with Article 342 of the Civil Code, exempting the adversary from providing evidence for the fact of such acknowledgment.¹²

Fourth requirement: Oath

The power of the individual to whom the right is addressed determines the effectiveness of the oath. Article 343 of the Civil Code states that an opponent's right is directed toward their adversary in cases where they are unable to justify a determination of the dispute. This is divided into two categories: decisive rights and supplementary rights. In addition to the supplementary oath specified in Article 348 of the Civil Code, which the judge may direct to one of the adversaries to supplement the evidence, Article 18 of the Commercial Code states, "If the party to whom proof is submitted by the notebook refuses to submit the latter, the judge may take an oath from the other party."

Fifth requirement: Expertise

Articles 125 to 145 of Title IV, "Means of Proof," in Book I of the Code of Civil and Administrative Procedures discuss expertise. This highlights the importance of expertise when a specialist with technical or scientific knowledge is required. Article 144 of the Code preserves the judge's authority to evaluate the expertise. Article 145, paragraph 2 of the same law stipulates that, in the case of expertise, the litigant must present the components of the expertise before the court to preserve their right to discuss them before the appellate court. "Discussions on expertise cannot constitute grounds for appealing or contesting the judgment in cassation if they have not been raised in advance before the judiciary that has determined the findings of the expertise." It would be prudent to amend this paragraph, as it contradicts the principles of litigation in two significant ways.

Regarding the evidence, we will not discuss it here, as Article 337 of the Civil Code indicates that it does not constitute evidence but rather serves to guide those who have decided to use alternative means of proof for their own advantage.

Second section: Common Contemporary Methods of Proof for Commercial and Civil Matters

With the advancement of modern technology, "electronic writing" and

"electronic signatures" have become essential components of electronic commerce, prompting the legislator to recognize these methods as valid forms of proof. We will discuss these technologies as follows:

First requirement: Electronic Writing

Electronic writing is now accepted as a form of proof under Article 323 bis 01 of Law No. 05/10, dated 20/06/2005, which amends and supplements the Civil Code. The law states, "Proof of writing in electronic form is considered equivalent to proof of writing on paper, provided that the identity of the person issuing it is verified and that it is prepared and preserved in conditions that ensure its integrity." This provision indicates that the legislator equates electronic writing with conventional writing.

Second requirement: Electronic Signature

Electronic signature possesses the legal capacity to substantiate lawful behavior, particularly in the context of electronic commerce.¹³ Article 327, paragraph 2 of the Civil Code, "The electronic signature shall be deemed valid in accordance with the conditions mentioned in Article 323 bis1." Law No. 15/04, enacted on 01/11/2015, established the primary guidelines for electronic signatures and certification¹⁴, further advancing this approach. According to Article 09 of this law, an electronic signature cannot be denied legal force or excluded from being used as evidence in court.

The Second Topic:

Appeals of the Specialized Commercial Court's Rulings

Methods of appeal are the legal means approved by the legislator to review judicial rulings by cancellation or amendment and by reference to the law No. 22/13, dated July 12, 2022, amending and supplementing the Civil and Administrative Procedures Code, does not introduce new remedies for appeal; instead, it states, "The proceedings before the Specialized Commercial Court shall be adjudicated by an appellate judgment before the Judicial Council in accordance with the rules provided for in this Act." Remedies for appeal are the legal means authorized by the legislature to review judicial rulings through annulment or amendment. The appeal procedures will be briefly discussed in relation to the same case, which we divide into two claims. The first claim addresses the regular appeal procedures before the Specialized Commercial Court, while the second discusses extraordinary appeal methods before the same court.

First requirement: Standard Appeal Procedures

The standard appeal remedies, defined in Article 313 of the Civil and Administrative Procedures Code, include an appeal against an appeal and a secondary appeal. These remedies are subject to execution unless the challenged judgment is covered by an expedited enforcement order in

accordance with Article 323 of the Civil and Administrative Procedures Code. The following summarizes the appeal remedies:

First section: Objection Appeal

An objection appeal is an ordinary means of appealing against absentia judgments, whereby any individual punished in absentia shall be summoned to re-examine the case both in fact and law¹⁵, as stipulated in Article 327 of the Civil and Administrative Procedures Code. Opposition is permitted only about absentia judgments and decisions issued by the Judicial Council.

Nevertheless, Article 536 bis5, added pursuant to Law No. 22/13 amending and supplementing the Code of Civil and Administrative Procedures, deviates from established practice by failing to address opposition in absentia judgments of the Specialized Commercial Court. The article states, "The case shall be adjudicated before the Specialized Commercial Court by an appellate judgment of the Judicial Council." This wording is ambiguous in its application. If applied literally, it suggests that judgments from the Specialized Commercial Court only permit an appeal, thereby excluding absentia judgments from the scope of an appeal against dissent.

The question arises as to whether Article 536 bis5 of the Civil and Administrative Procedures Code indicates a legislative omission or represents a new system of appeal for the Specialized Commercial Court. In our opinion, since the legislature has not explicitly denied the challenge to the opposition of absentia judgments, the general rules should apply in this case. Therefore, all absentia judgments of the Specialized Commercial Court must be subject to challenge.

Second section: Appeal

An appeal serves as the practical embodiment of the principle of litigation in two degrees, aimed at reviewing the dispute in both fact and law to rectify any errors made by first-instance judges. It also allows adversaries to present any missing evidence and arguments during the proceedings. According to Article 536 bis 5 of the Civil and Administrative Procedures Code, all judgments rendered by the Specialized Commercial Court may be appealed to the Judicial Council, unless otherwise specified by the legislator. The following decisions are not subject to appeal:

- According to Sections 81-334 of the Civil and Administrative Procedures Code, non-adjudicative judgments and those mandating an inquiry procedure cannot be appealed in their entirety.
- Appeals do not accept decisive orders related to the issue or requests for a stay of execution under Article 633 of the Civil and Administrative Procedures Code.

- The appeal does not accept the final judgment regarding objections to expedited enforcement under Article 326 of the Civil and Administrative Procedures Code.

An appeal must be lodged within the time limits specified in Article 336 of the Civil and Administrative Procedures Code: one month if formal notification of the sentence is addressed to the same individual, and two months if the notification is sent to the actual or chosen domicile. The appeal must be filed as a petition with the Judicial Council Control Secretariat, bearing the seal and signature of counsel, and must include the data specified in Article 540 of the Civil and Administrative Procedures Code. Failure to comply may result in formal inadmissibility. Additionally, the appeal must be accompanied by a transcript of the appellant's decision to avoid inadmissibility in form, as outlined in Article 541 of the Civil and Administrative Procedures Code.

It is crucial to emphasize that the appeal has a suspensive effect on the merits and the parties to the dispute before the Judicial Council. The matter is reviewed in both fact and law, and the judgment of the appellant may be reversed, endorsed, or amended. However, a question arises: if the Specialized Commercial Court has ruled the claim inadmissible due to nullity of the proceedings or lack of qualitative jurisdiction, does the Judicial Council possess the authority to overturn the appellate judgment and address the subject matter of the dispute, or must it return the case to the Specialized Commercial Court, given that it has not exhausted its jurisdiction over the subject?

In the absence of a legal text, it is preferable to return the file to the Specialized Commercial Court to uphold the principle of litigation in two degrees and ensure that the matter is examined by a specialized court, especially since the appellate body is an ordinary court rather than a specialized judicial entity.

Second Requirement: Extraordinary Means of Appeal

In this section, we will address the appeal against a non-litigant's objection as the first branch, followed by the appeal for review as the second branch concerning their potential exercise before the Specialized Commercial Court. The appeal in cassation is excluded, as the commercial court is not considered the last instance but rather as a venue for issuing trial judgments.

First section: Appeal Against a Non-Litigant's Objection

An appeal against an objection by a non-litigant is considered an extraordinary method of challenging judgments. This provision allows any individual with an interest, who is neither adversarial nor representative but

has intervened in the proceedings and has been adversely affected by the judgment¹⁶, to request that the injurious provisions be set aside or that the judgment or decision be annulled in its entirety in cases of indivisibility.

Such appeals may contest all judgments, decisions, and urgent orders that determine the origin of the conflict, as stipulated in Article 380 of the Civil and Administrative Procedures Code. This allows the matter to be re-adjudicated in both fact and law. However, state orders and temporary urgent orders are excluded from this appeal, as they do not resolve the subject matter of the dispute and lack the authority of a final judgment.

Appeals may only be initiated in cases where the appellant has a vested interest under Article 381 of the Civil and Administrative Procedures Code, and the challenged judgment or decision directly affects the appellant's rights or interests. Furthermore, the objection must be submitted in accordance with the prescribed forms for filing proceedings before the author of the challenged judgment, decision, or order, as outlined in Article 385 of the Civil and Administrative Procedures Code. Once all conditions for formulating such an objection are met, the competent judicial authority will consider the limits of the submitted objection in accordance with Article 387 of the Civil and Administrative Procedures Code, which may involve revoking or modifying the contested judgment.

First requirement: Appeal for Review

The appeal for review is one of the weakest remedies available, as it seeks to examine the order, judgment, or decisive decision in the matter, provided that the prerequisites of the petition are met and in compliance with Article 390 of the Civil and Administrative Procedures Code, which permits the judgment to be reviewed.

In this context, a question arises regarding whether an appeal can be filed against the review of the Specialized Commercial Court's findings after the time constraints for dissent and appeal have expired. Some argue that the petition for review cannot be challenged because the petitioner has abandoned the customary avenues of appeal. However, we find this opinion unsatisfactory, as the legislator employed the text of Civil and Administrative Procedures Code, Article 350 in the cassation appeal. While appealing under Article 390 of the Civil and Administrative Procedures Code, the term "urgent order," "judgment," or "decision with the force of a judgment" indicates that the ruling is effective in two circumstances: either by exhausting the usual procedures of appeal or by missing the ordinary appeal deadlines.¹⁷

The rationale for admitting an appeal for review is that the appellant may not have discovered the falsification, false testimony, or document in the possession of the opponent until after the judgment had taken effect.

Moreover, French law allows for an appeal against a petition, even if the opponent loses the appeal. The rationale is based on the concept that "fraud ruins everything," which suggests that the reasons for the petition outweigh the fact that the opponent has missed the deadline for the petition.

An appeal for review is only permitted under the two conditions specified in Article 392 of the Code of Civil and Administrative Procedures:

- If the judgment or order is based on witness evidence or documents that the party admitted to falsifying, or if such evidence was discovered judicially after the judgment or order was issued and holds the force of *res judicata*.
- If critical documents were deliberately withheld in the possession of the litigants after the judgment or order had been rendered and possess the force of *res judicata*.

If the appeal for review is granted, the court will rule on the factual and legal issues by Article 390 of the Code of Civil and Administrative Procedures. The role of the review in appealing the motion for review is confined to the conditions justifying its review, assuming there are no other linked requirements under Article 395 of the Code of Civil and Administrative Procedures.

Conclusion:

In summary, the methods of proof and appeal within the Specialized Commercial Court are essential components of the commercial justice process. These specialized courts were established to keep pace with commercial advancements and to identify the most suitable resolutions for commercial disputes. They accomplish this by relying on legal and logical evidence, as well as the expertise of judges within these courts, resulting in equitable commercial justice.

Our investigation revealed that the legislator did not introduce any new challenges or proofs concerning commercial matters, despite the adoption of Law 22/13, which amended and supplemented the Code of Civil and Administrative Procedures. The legislature has maintained the principle of free proof as a general norm in commercial disputes, allowing it to be established in any manner as outlined in Article 30 of the Commercial Code. Merchants have been granted the freedom to present evidence unless explicitly prohibited by legal means.

Regarding remedies for appeal, Article 536 bis does not address *absentia* judgments and permits an appeal against all judgments rendered by the Specialized Commercial Court. However, applying the exact wording of this article in practice can be challenging. We may follow the ordinary

procedures for appealing absentia judgments of the Specialized Commercial Court, as the legislator did not explicitly prohibit challenging these judgments but merely mentioned them.

When it comes to extraordinary appeals to the Specialized Commercial Court, we specifically exclude the use of the cassation appeal process, as the Specialized Commercial Court does not issue final judgments; rather, all of its rulings can be challenged or contested according to general standards.

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